

NOTICE OF BOARD OF REGENTS' MEETING

Date: **March 20, 2009**

Board business not completed on this day will be taken up on another day and time announced at the conclusion the meeting.

Time: **9:00 a.m.**

Place: **Honolulu Community College
Loui Conference Center
874 Dillingham Blvd.
Honolulu, Hawai'i 96817**

AGENDA

- I. Call Meeting to Order**
- II. Approval of Meeting Minutes of February 20, 2009**
- III. Public Comment Period:** *Individuals may orally testify on items on this agenda either during the Public Comment Period or when the agenda item is taken up by the Board. Please call the Board Office prior to the meeting or notify the Secretary of the Board at the meeting site. Written testimony is also accepted.*
- IV. Report of the President**
- V. Report of the University of Hawai'i Foundation**
- VI. Items for Board Action:**

UH Mānoa

- 1. Approval of Office Space Lease in the Gold Bond Building from Ala Moana Property Owner, LLC, for the Cancer Research Center and JABSOM
- 2. Approval to Amend BOR Policy, Chapter 6, to Establish a Mandatory Student U-Pass Fee
- 3. Approval to Establish a Bachelor of Business Administration Degree in Entrepreneurship, Shidler College of Business

UH Community Colleges

- 4. Approval of A.S. Degree, Certificate of Achievement, and Certificate of Completion for the Fire Science Program — Hawai'i Community College
- 5. Approval of Permanent Status of the Associate in Arts Teaching Degree — Leeward Community College
- 6. Approval of a Memorandum of Agreement with the State Department of Transportation for the Kaunualii Highway Widening Project — Kaua'i Community College

UH System

- 7. Approval to Amend BOR Policy, Chapter 4, Articulation of Commitment to Native Hawaiians
- 8. Acceptance of UH Consolidated Financial Statements
- 9. Acceptance of UH Bond System Financial Statements
- 10. Approval of CIP and R&M Project Contracts for FY 2008-2009
- 11. Quarterly Financial Status Report (*information only*)
- 12. Quarterly Endowment Fund Performance Report by Third Party Monitor (*information only*)

Board Business

13. Report on the Status of the Presidential Selection

VII. Acceptance and Approval of Gifts, Grants and Contracts [Attachments A1 and A2]

VIII. Approval of Personnel Actions [Attachments B1, B2]

IX. Announcements

- a. Next Meeting of the Board:
Date: April 16, 2009
Place: University of Hawai'i – West O'ahu

VIII. Executive Session (*closed to the public*):

Personnel Actions Related to the Following Positions: (*To discuss the following personnel matters pursuant to HRS §92-5(a)(2)*)

- a. Approval to Appoint Vice Chancellor for Academic Affairs, UH Mānoa
- b. Discussion of Multi-Year Appointments
- c. Approval of Emeritus Titles
- d. Approval of Honorary Degrees
- e. Update on Executive Searches

Legal and Real Estate Matters: (*To consult with attorneys on powers, immunities, and liabilities pursuant to HRS §92-5(a)(4); To consider negotiations concerning acquisition of public property pursuant to HRS §92-5(a)(3)*)

- f. Approval to Amend BOR Policy, Chapter 4, Articulation of Commitment to Native Hawaiians
- g. Status Report on Campus Developments (*information only*)
- h. Approval of Office Space Lease in the Gold Bond Building from Ala Moana Property Owner, LLC, for the Cancer Research Center and JABSOM

Collective Bargaining: (*To discuss authority of persons conducting labor negotiations and conducting negotiations pursuant to HRS §92-5(a)(3)*)

- i. Collective Bargaining

IX. Adjournment

Consent Agenda for Indemnity Provisions

Indemnity Provision – Agreement between the University of Hawai'i (UH) and the Mesothelioma Applied Research Foundation (Meso Foundation)

The Meso Foundation is a privately funded organization that is dedicated to finding a cure for mesothelioma, a cancer of the chest, heart, lungs and abdomen. The Meso Foundation proposes to award \$100,000 over a period of two years, to the University of Hawai'i to perform "Studies of Tumor Necrosis Factor alpha as a new Target for Human Malignant Mesothelioma Preventive and Therapeutic Strategy" (Project). The Project will be performed by Haining Yang, PhD, Asst. Professor, UH Cancer Research Center of Hawaii, and will involve the study of asbestos induced-mesothelioma. The Sponsor will provide funding for this project under the conditions of Dr. Yang's proposal, but will not have any further input into the treatment of the animals or the performance of the study, once begun.

Under this award, Dr. Yang will establish an *in vitro* model of asbestos carcinogenesis. Dr. Yang will assess whether, by blocking TNF- α , she will be able to prevent asbestos-induced carcinogenicity. She will conduct similar tests *in vivo*, using a hamster mesothelioma model that they have already established. She will also assess whether by blocking TNF- α , she will be able to inhibit tumor growth and invasion. The *in vitro* work will be done in plastic cell culture dishes and standard tubes for molecular biology experiments.

Several attempts were made to negotiate the elimination or rewording of the indemnification section of the Award Agreement. Finally, the Foundation's Executive Director, Mr. Christopher E. Hahn (Chahn@curemseo.org) informed the Office of Research Services that the Foundation requires all grantees to indemnify them and requests that Clause 7 be accepted as is. The Foundation is also not amenable to any alternative language.

The Terms and Conditions of the Award, clause 7, states, as follows:

"You and the Institute (UH) assume all responsibility for the proposed work of the Project, and the Institute (UH) will hold the Meso Foundation and its officers, directors and employees harmless from any and all lawsuits, claims, judgment, damages, awards or losses, arising from the research, investigations or conduct of the Project."

Dr. Yang stated in writing that, "There should be no bio-safety issues for me or my staff," because she has been working with asbestos for over five years and to minimize risk, she follows standard procedures for asbestos processing and disposal. Her process is as follows: those administering the asbestos will wear non-disposable half-mask respirators equipped with HEPA (high efficiency particulate air) filters. All of these will

comply with the HIOSH (Hawaii Occupational Safety and Health division of the State Department of Labor and Industrial Relations) respirator standard. HIOSH standards meet or exceed the federal OSHA (occupational health and safety act standards) for worker and workplace safety. Upon disposal, all medium and solutions that have asbestos will be filtered through a 0.45 um filter under a hood. All the tips and filters contaminated with asbestos are collected and placed into a sealed container specifically for asbestos waste. An inventory sheet is kept on top of the container and an estimate of the amount of asbestos deposited in the container is added to it. When the container is 2/3 full, the security department is notified and the container is picked up and replaced with an empty one.

This project will be performed by UH personnel only, using only UH property, and work will be performed in John A. Burns School of Medicine's Biosciences Building, lab 228.

For the following reasons, it is unlikely that any lawsuit, claims or damages would arise from the work done under this project: approval for use of animals has been obtained from the UH IACUC (Institutional Animal Care and Use Committee); there are no human subjects involved in this research project; and, the Sponsor is asking UH to indemnify them only on actions and omissions of UH, not on any actions or omissions of the Foundation as they will have no input on the treatment of animals or performance of the study.

It does not appear to be in the University's interest to obtain insurance for this grant due to the minimal risk involved to personnel and IACUC approval has been obtained for the animals.

Under these circumstances it is highly unlikely that the indemnification clause will be invoked.

Consent Agenda for Indemnity Provisions

Indemnity Provision - Agreement between the University of Hawai'i (UH) and the Smithsonian Astrophysical Observatory

Smithsonian Astrophysical Observatory (SAO) is making \$107,529.00 available to the University of Hawai'i to do a study on The Most Obscured Super-Massive Black Holes ("Project"). The Project will be performed by Dr. Ezequiel Treister and Dr. David Sanders, as his mentor ("PIs"). In a Postdoctoral Fellowship, the postdoctoral fellow (Dr. Treister) applies directly to SAO for an award. He signifies his desire to perform the research at the University of Hawaii and partners with an established investigator (Dr. Sanders) to complete his research. UH then applies to the institute for funds to allow Dr. Treister to do his research here. SAO will release funds to UH for the benefit of Dr. Treister. The current period of performance of the project is from September 1, 2008 to August 31, 2009, but it will be a multi-year project.

The research of the PIs will focus in the study of the growing super-massive black holes in the center of galaxies. The research has two main goals. First, the PIs will study the multiwavelength properties of a highly complete sample of active galactic nucleus (AGN), including the optically-faint obscured AGN at high redshift. In particular, they will focus on the properties of obscured AGN in the infrared (IR) bands, where most of the absorbed energy is re-emitted. This is a study that has heretofore not been feasible but is now possible by using the large multiwavelength coverage in the COSMOS and Extended Chandra Deep Field South (E-CDFS) fields. In addition, they will obtain and study a local sample of heavily obscured Compton thick (CT) AGN selected at high energies from INTEGRAL and Swift observations. This will allow them to start to constrain for the first time the total AGN space density and the AGN contribution to the Universe energy budget, independent of selection effects. The PIs will perform the most accurate census to-date of these "active galaxies" and compare with the properties of dormant black holes. Dr. Treister has requested to be allowed to go to the Big Island observatories to obtain data for the Project as an "observer." If Dr. Treister is invited up by the operators of the telescope, a trained technician at the observatories will operate the telescope to provide the data for the Project. The technician is employed by one of the multiple conglomerates created specifically to operate the telescopes at the observatories, and it is not known which of the conglomerates will be operating the telescope on the night of the observation. If Dr. Treister is not invited, he will obtain the required data from other sources. As with all science research, the results are published in refereed journals.

One of the provisions incorporated into this Postdoctoral Fellowship Agreement is an indemnity provision, which provides as follows:

D. General Release

Award Recipients are responsible for all actions taken or not taken in the performance of the activities under this Award, and the Smithsonian Institution and NASA expressly disclaim any responsibility to any third party therefor. Further, to the extent allowable by law, the Award Recipient agrees to hold both the Smithsonian and NASA harmless from,

and to accept all responsibility for, any harm suffered by anyone arising out of actions of the Award Recipient or its employees, agents, and representatives if visiting SAO.

The Project requires Dr. Treister to take one trip to SAO per year to discuss his findings, progress, and receive updates from SAO. SAO is located in Cambridge, Massachusetts. Dr. Treister has already traveled to SAO and returned without incident. Dr. Treister may also travel to the Subaru, Gemini and Keck observatories on Mauna Kea to observe and take astronomical data. All other work will be performed on the University of Hawaii – Manoa campus. Thus, it is extremely unlikely that anyone would suffer harm arising out of the Actions of the Host Institute (UH), its employees, agents, or representatives (Dr. Treister), if visiting SAO.

Another provision states:

B. Indemnification

The Award Recipient agrees not to make any claim against the U.S. Government, NASA, or the Smithsonian Institution, its Regents, directors, officers, employees, volunteers, licensees, representatives and agents, with respect to activities under this Award for the injury or death of its employees or of contractor or subcontractor employees, or to the loss of its property or that of its contractors and subcontractors, whether such injury, death, damage or loss arises through negligence or otherwise, except in the case of willful misconduct.

Though the title includes the word “indemnity,” this provision is an agreement to not to file a claim against US Government, NASA, or SAO as it relates to claims by University of Hawai'i employees and properties belonging to the University of Hawai'i. Since UH does not envision a circumstance under which the University would want to bring a claim against US Government, NASA or SAO for injury or death of UH employees or to the loss of UH property because of this research, we do not believe that this provision is problematic.

However, UH may work with non-UH employed technician at the observatories on the Big Island who will operate the telescope to provide the data we require. For the reasons described above, UH will not know which technician it will work with. If Dr. Treister is invited to the observatories, he will be located at a facility that is at the mid-level point of Mauna Kea, while the technician operates the telescope at the high-level facility. The two will have minimal, if any, physical interaction since most, if not all, communications are done electronically. The technician has sole control over the equipment. Since the technician and Dr. Treister will have very little or no physical interaction and the technician will be in control of the equipment, it is highly unlikely that any injury or death will occur. If the technician files a claim against US Government, NASA or SAO, then under this provision, UH will indemnify UH Government, NASA and or SAO. However, for the reasons provided herein, it is extremely unlikely that a technician will incur injury or death from his activities or that a claim would be filed against the US Government, NASA or SAO. In the entire history of IfA, no technician has ever filed a claim against an “observer” (such as Dr. Treister) or against a funding agency, such as NASA or Smithsonian.

Under these circumstances, it is highly unlikely that the indemnification clause will be invoked.

B-1 Personnel Actions.

UNIVERSITY OF HAWAI'I AT MĀNOA

Executive

DASENBROCK, Reed Way
Vice Chancellor for Academic Affairs
Appointment and Tenure
\$23,750 per month
April 6, 2009 -- April 5, 2012

Faculty

KEEVER, Beverly Ann
Professor
College of Social Sciences
Emeritus
Upon Board Approval

KOSASA, Thomas S.
Professor
John A. Burns School of Medicine
Emeritus
Upon Board Approval

KROENKE, Loren W.
Researcher
School of Ocean and Earth Science and Technology
Emeritus
Upon Board Approval

LIN, Yu-Chong
Professor
John A. Burns School of Medicine
Emeritus
Upon Board Approval

MUENOW, David W.
Professor
College of Natural Sciences
Emeritus
Upon Board Approval

SAXENA, Narendra K.
Professor
School of Ocean and Earth Science and Technology
Emeritus
Upon Board Approval

SIBERT, John R.
Researcher
School of Ocean and Earth Science and Technology
Emeritus
Upon Board Approval

WEGNER, Eldon L.
Professor
College of Social Sciences
Emeritus
Upon Board Approval

Recommendation: That the Board approve the personnel
actions as recommended.

David McClain
President

- B-2 Pursuant to Act 6, Special Session 2008 (SB 2263), the following proposed compensation actions for excluded executives are disclosed for purposes of public comment.

COMMUNITY COLLEGES

Executive

HILL, KATHY L.
Interim Institutional Research and Analysis Program Officer
Leeward Community College
Appointment
\$8,442 per month
March 23, 2009